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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/529,690	04/18/2000	ROLAND COX	JYG122USA	3166

7590 01/13/2005
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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Applicant(s)	Applicant(s)	
	09/529,690	COX, ROLAND	
	Examiner	Art Unit	
	Neil Levy	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13, 16-18, 20, 31, 32 and 34-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 35, 36 and 46 is/are allowed.
- 6) ☒ Claim(s) 13, 16-18, 20, 34 and 37-45 is/are rejected.
- 7) ☒ Claim(s) 31 and 32 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1734

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 13, 16, 17, 18, 20, 34, 37-45 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Honguu et al 5312688.

The patent solves the problem of bedding materials hosting all manner of vermin, inclusive of those found in humid conditions (col. 1, lines 9-35), by fixing to the fibers, (line 7-11, col. 2) the instant fungicide triclosan (line 39-41, col. 2). The fibers include acrylics (col. 3, top) and are formed into bedding materials that are known habitats of mites (col. 4, top) including (claim 9) bed quilts. Since the antifungal is fixed, it could be laundered. The prior art did not know how to provide fixed fibers, according to background, and Honguu solves that problem. Although mites are not named, Fungus is (col. 1, lines 31); in fact the method is to control mites and other - a carina, and utilizes the antifungal compound of applicant's invention, although not knowing the compound was as an antifungal. Thus, Honguu's compound would prevent the same activity of aspergillus as does the instant antifungal. Acaricide (Triclosan) application is described (col. 5, lines 3-20). The acaricide is taught as entering the porous or concave fiber areas (col. 3, lines 15-25) as does the instant fissured (claim 34) fiber. The instant claims to floor coverings, stuffing's, filling material and upholstery are met, because Honguu utilizes yarns for stuffing, bedding; tatami mats, bed quilts (col. 9, lines 30-35) in living rooms and bedrooms (line 25, 28, col. 1). Stuffed toys, pillows (col. 9, lines 45-49) are specified; thus one small step of the artisan to an upholstered article, if

Art Unit: 1734

not considered pillow, for the floor, would be within the scope of the Hongus patent and within the purview of the artisan to cover.

Hongu claim 1 is to 0.05 – 5% triclosan.

Applicant's arguments filed on 10/15/04 have been fully considered but they are not persuasive. Applicant supplies readable copy, and declaration, but these are not seen as convincing, because update search finds Honguu provides the claimed invention. The arguments directed to prior rejections are persuasive.

Claims 35, 36 and 46 are allowed.

Claims 31, 32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (571) 272-0619. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gray Kunz can be reached on (571) 272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1734

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Levy/LR
December 30, 2004

NEIL S. LEVY
PRIMARY EXAMINER